IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 34020 of 2006(Y)

PETITIONER:

RAMACHANDRAN.K.K., UPPER PRIMARY SCHOOL ASSISTANT, THAZHEKALARI U.P.SCHOOL, VADAKARA, KOZHIKODE.

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS:
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1. DISTRICT EDUCATIONAL OFFICER, VADAKARA, KOZHIKODE DISTRICT.

2. ASSISTANT EDUCATIONAL OFFICER, VADAKARA, KOZHIKODE DISTRICT.

3. MANAGER, THAZHEKALARI U.P.SCHOOL, VADAKARA, KOZHIKODE DISTRICT.

4. HEADMASTER, THAZHEKALARI U.P.SCHOOL, VADAKARA, KOZHIKODE DISTRICT.

ADDITIONAL RESPONDENTS

5. K.SASI, PRESIDENT PARENT TEACHERS' ASSOCIATION THAZHEKALARI, U.P.SCHOOL IRINGAL P.O., VADAKARA, KOZHIKODE

ADDL. R5 is impleaded as per order dated 12-01-07 in I.A.No.325/07.

BY ADV. SRI.M.P.MOHAMMED ASLAM
SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
SRI.ELVIN PETER P.J.
GOVT. PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE EXPLANATION DATED 15-2-06**
EXT.P2	**TRUE COPY OF THE COMMUNICATION DTD. 15-2-06**
EXT.P3	**PHOTOSTAT COPY OF THE COMMUNICATION WITH MEMO OF CHARGES DTD. 27-2-06**
EXT.P4	**PHOTOSTAT COPY OF THE COMMUNICATION DTD. 1-3-06**
EXT.P5	**PHOTOSTAT COPY OF THE COMMUNICATION DTD. 1-3-06**
EXT.P6	**PHOTOSTAT COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.**
EXT.P7	**PHOTOSTAT COPY OF THE REPRESENTATION DTD. 19-7-06**
EXT.P8	**PHOTOSTAT COPY OF THE REPLY.**
EXT.P9	**PHOTOSTAT COPY OF THE REPLY DTD. 25-7-06**
EXT.P10	**PHOTOSTAT COPY OF THE REPRESENTATION TO R1**
EXT.P11	**PHOTOSTAT COPY OF THE ORDER DATED 10-8-06**
EXT.P12	**PHOTOSTAT COPY OF THE OBJECTION DATED 10-11-06**
EXT.P13	**PHOTOSTAT COPY OF THE ORDER DATED 18-11-06**
EXT.P14	**PHOTOSTAT COPY OF THE NOTICE ISSUED BY R3**

RESPONDENT'S EXHIBITS

EXT.R3(A)	**TRUE COPY OF THE LEAVE APPLICATION AND THE ATTENDANCE REGISTER.**
EXT.R3(B)	**TRUE COPY OF THE COMPLAINT OF THE TEACHER-IN-CHARGE AND PEON DTD. 23-9-89. MEMO OF THE MANAGER DTD. 26-9-89 . REPLY OF THE PETITIONER DTD. 2-9-89**
EXT.R3(C)	**TRUE COPY OF THE COMPLAINT DTD. 9-9-02 AND THE DECISION OF THE P.T.A. DTD. 1-01-02**
EXT.R3(D)	**TRUE COPY OF THE COMPLAINT OF THE TEACHERS.**
EXT.R3(E)	**TRUE COPY OF THE REPORT OF THE HEADMASTER**
EXT.R3(F)	**TRUE COPY OF THE PETITION SUBMITTED BY THE HEADMASTER**
EXT.R3(G)	**TRUE COPY OF THE PETITION FILED BEFORE THE VANITHA COMMISSION.**
EXT.R3(H)	**TRUE COPYO F THE REQUEST OF THE MANAGER.**
EXT.R3(I)	**TRUE COPY OF THE MEETING OF THE P.T.A. DTD. 27-6-06**

True Copy

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.34020 OF 2006

Dated this the 23rd day of January, 2007

JUDGMENT

Case of the petitioner in short is as follows:

Petitioner is working as H.S.A. from 20-11-1986. Disciplinary proceedings were initiated against him. According to the petitioner, it was for the imposition of minor penalty within the contemplation of Rule 76 of Chapter XIV A K.E.R. He relies on Ext.P3 in this regard. Petitioner was placed under suspension under Ext.P1. Ext.P1 is dated 15-02-2006. By Ext.P5, the AEO has permitted continuance of suspension beyond 15 days. Ext.P5 is seen dated 01-03-2006.

2. Petitioner preferred Exts.P6 to P9 representations against the continued suspension. The permission granted under Ext.P5 was beyond 15 days from the date of suspension. Ext.P11 is the order of the AEO, by which he has directed the manager to reinstate the petitioner and also directed the imposition of minor punishment. Manager preferred an appeal. Petitioner filed Ext.P12. District

Educational Officer considered the matter and passed Ext.P13 order permitting imposing of major penalty taking note of the charges seen to be proved against the petitioner. Ext.P14 is the notice issued by the manager proposing imposing of major penalty of removing the petitioner.

3. Petitioner challenges Ext.P13 and P14. Contentions of the petitioner are three fold. Firstly, he would contend that continued suspension of the petitioner beyond 15 days is illegal for the reason that even though Ext.P5 order is passed, it is passed beyond the time limit fixed under the law. Secondly, he would contend that Ext.P13 is passed in an incompetent appeal filed by the manager. For this he would rely on **Gangadharan v. Dy.Director of Education** (1993(2) KLT 826). Finally, he would contend that even assuming the appeal is competent, appellate authority should not have permitted at the appellate stage the request to impose major penalty, for which he relies on 1976 KLT SN 89.

4. I heard learned counsel for the manager, Sri.V.A.Muhammed, learned counsel for the Parent Teachers Association, Sri.Elvin Peter and learned Government Pleader also.

5. Learned counsel for the manager, Sri. V.A.Muhammed would justify the filing of the appeal before the District Educational Officer resting the appeal under Rule 64 of Chapter XIV A K.E.R. Party respondents would point out that there is no jurisdiction with the AEO to direct imposition of particular penalty. He would point out Ext.R3(G) to contend that though in Ext.P3 there is reference to Rule 76 and also Rule 65(ii), a perusal of Ext.R3(G) would show that it is for following the procedure for imposing the major penalty that Ext.R3 (G) was sent to the Educational officer for the purpose of conducting an enquiry by the Educational officer and it is on that basis that apparently the AEO going by a perusal of Ext.P11 has conducted the enquiry, he submits. No doubt, the question as to whether an appeal lies under Rule 64 is the main point.

6. Sri.V.A.Muhammed would submit that the manager will prefer a revision against Ext.P11 order and a direction may be issued to take a decision on the revision.

7. In such circumstances, the writ petition is disposed of as follows:

If respondent No.3 files a revision under Rule 92 against Ext.P11

order within a period of ten days from today, the revisional authority will consider the same after hearing all the parties including the petitioner and take a decision in accordance with law within a period of two months from the date of filing of the revision. In the meantime, I feel that this is a case where the direction to reinstate the petitioner should be kept in abeyance for the period of two weeks from today. It is ordered accordingly. Thereafter, it is open to the petitioner to seek interim relief before the Government. The proceedings pursuant to Ext.P14 will depend on the outcome of the decision by the Government on the revision to be filed by the manager. In view of the stand taken by the manager, it is not necessary for me to go into the validity of Ext.P13 as such.

8. Respondent No.3 will produce a copy of the judgment before the Government for compliance.

Writ petition is disposed of as above.

K.M.JOSEPH
JUDGE

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